



Thursday, January 11, 2007

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**Neighborhood Planning & Zoning
RECOMMENDATION FOR COUNCIL ACTION**

ITEM No 11

Subject Approve a resolution authorizing an Interlocal Agreement regarding the release of extraterritorial jurisdiction (ETJ) to the Village of Bee Cave (approximately 145 acres approximately two miles west of the intersection of SH 71 and RM 3238, will be released from Austin's ETJ to Bee Cave's ETJ)

Additional Backup Material

(click to open)

- ☐ **Staff Report**
- ☐ **Resolution**
- ☐ **Interlocal Agreement**

For More Information Virginia Collier, 974-2022, Jackie Chuter, 974-2613, Sylvia Arzola, 974-6448

Boards and Commission Action Reviewed by the Environmental Board

The Village of Bee Cave has requested the release of approximately 145 acres of Austin's extraterritorial jurisdiction ("ETJ") to be included in the Village of Bee Cave's ETJ. The area is located in Travis County west of the Village of Bee Cave, north of State Highway 71 and west of the intersection of State Highway 71 and Hamilton Pool Road.

The proposed release area has minimal annexation potential and significant future service constraints due to geographic location and physical impediments. The City's primary interest in retaining this ETJ has been enforcement of its water quality ordinances. In response to previous requests for ETJ releases, the City has released ETJ conditioned on the execution of restrictive covenants by property owners and interlocal agreements with the receiving cities subjecting the released territory to water quality related development standards similar to what is required under the City's regulations.

The balance of this tract is currently located in Bee Cave's ETJ and is the site of the proposed Falconhead West Development. The proposed development for the release area includes single-family residential lots and approximately 122 acres that will be dedicated as open space/greenbelt/preserve and deeded to the Village of Bee Cave for management and operation. The LCRA may use approximately 40 of the open space acres for wastewater disposal using a subsurface drip irrigation system. The development proposal for the release area equals or exceeds the City of Austin's requirements for all five of the criteria used to evaluate the environmental impact of the proposed development and would be allowed under Austin's current regulations. Upon release this property will be required to develop under equivalent regulations as outlined in the Restrictive Covenant and attached to the proposed Interlocal Agreement.

This release should be made as a continuing process in regional coordination and cooperation with our neighboring cities, contingent on encumbering the proposed release area with restrictions agreeable to all parties that would provide the same level of water quality protection as the regulations in place prior to the release.

The product of several months of discussions and meetings with officials from Bee Cave, this release of ETJ is recommended at this time.

**Proposed Extraterritorial Jurisdiction (ETJ) Release
to the Village of Bee Cave
Staff Recommendation
November 20, 2006**

Background

The City of Austin has received a request from the Village of Bee Cave requesting release of approximately 145 acres of Austin's extraterritorial jurisdiction (ETJ) to be included in the Village of Bee Cave's ETJ. The area is located in Travis County north of State Highway 71 west of the intersection of State Highway 71 and Hamilton Pool Road. The property is the site of the proposed Falconhead West Development. The development as proposed would be allowed under Austin's current regulations and upon release will be required to develop under equivalent regulations as outlined in the proposed Interlocal Agreement and Restrictive Covenant. A map of the proposed release area is attached to this memo.

Issues

Typically ETJ adjustments are evaluated according to the following general criteria:

Annexation potential - determination of the mid-term potential for the area to be annexed by the City of Austin and an assessment of the impact of the proposed release on the City's long-term annexation plans.

Contiguity requirements cannot be met for immediate annexation into the City of Austin and the closest jurisdictional boundary of the City of Austin is approximately 4 miles to the east. This release does not restrict the City's future ability to annex and serve adjacent areas.

Water and Wastewater Utility service potential - determination of whether the area can be served by the Water and Wastewater Utility in the mid-term and an assessment of the potential impact of the proposed release on the Utility.

Austin does not have service immediately available and the ability for future service to the property is limited. The proposed Falconhead West Development is not in the City's water or wastewater CCN.

Geographic constraints - assessment of any physical impediments (including location and topography) that severally restrict the ability to provide services and annex the area in the future.

The location of the Village of Bee Cave physically separates the property and effectively restricts Austin's ability to serve area annex this area in the future.

Environmental impact - assessment of the area in terms of its environmental sensitivity and an analysis of environmental (including watershed) regulations currently applicable as compared to regulations that would be applied should the release be granted.

Site Summary

Development consists of single family homes, some commercial development along Hwy 71, and includes infrastructure to provide water and wastewater to area residents. Approximately 122 acres will be deed restricted and dedicated to the Village of Bee Cave as open space. The LCRA may use approximately 40 of the open space acres for wastewater disposal using a subsurface drip irrigation system.

Stormwater runoff from the site drains to Lake Travis via Hurst Creek and development would ordinarily be subject to Austin's Water Supply Rural Watershed Rules. The property owners will not develop the part of the site that is in Little Barton Creek and subject to the Barton Springs Zone Rules. Slopes greater than 15% occupy approximately 40 acres of the site.

In our estimate the owner's stormwater management plan exceeds or equals the City of Austin's Water Supply Rural Watershed Rules requirements.

Evaluation Criteria

Staff compared the developer's proposal to Austin's Water Supply Rural Watershed Rules and used the criteria below to evaluate the project. For a more detailed comparison between the developer's proposal and Austin's Water Supply Rural Watershed requirements see the attached table.

1) Density & Impervious Cover Austin uses density limits for single family development and impervious cover limits for non-residential development. The applicant will build 38 single family homes, our code would allow for as many as 82. The non-residential areas of the site will be below the 25% NSA impervious cover, with transfers, allowed by Austin.

2) Stormwater Treatment Austin does not require stormwater treatment for developments with less than 20% NSA impervious cover. Overall estimates for impervious cover at the site are 19% NSA. The developer's proposal, however, still requires that they reduce by 70% the increase in total suspended solids, phosphorous, and for non-residential development, oil & grease.

3) Stream Buffers Austin does not require buffers for streams that drain less than 64 acres. Streams that drain more than 64 acres will receive buffers per Austin's requirements. Streams that drain from five (5) to 64 acres will receive a 50 foot buffer.

4) Critical Environmental Features and Steep Slopes The applicant will use Austin's CEF buffer and steep slope requirements.

In summary, the development proposal equals or exceeds the City of Austin's requirements for all five (5) of the criteria used to evaluate the Bradford Tract and its release to the Village of Bee Cave.

Annexation potential by the receiving city - assessment of the ability of the receiving city to provide services and annex the area.

The property is currently contiguous to the Village of Bee Cave's ETJ which is generally better positioned to serve the area in the immediate and long-term future. The Village of Bee Cave has plans to annex the property after it is released from Austin's ETJ.

Long-term effects of cumulative ETJ releases to other jurisdictions - assessment of limiting the geographic expansion of City's regulatory authority and of increasing the amount of land near Austin but beyond Austin's jurisdiction, available for development.

The most recent ETJ adjustment with the Village of Bee Cave was effective March 7, 2002 and released approximately 38 acres of a platted single family subdivision to the Village of Bee Cave.

Hardship or extenuating circumstances - relief of a condition that causes an undue hardship on a property owner or where unusual circumstances dictate the need for a release.

This ETJ release request does not relieve a hardship condition, as such situation does not exist.

Recommendation

The proposed ETJ release has minimal annexation potential and future service constraints due to its geographic location and physical impediments. The development proposal equals or exceeds the City of Austin's requirements for all five (5) of the criteria used to evaluate the environmental impact of the proposed development. This release should be made contingent on encumbering the property with restrictions agreeable to all parties that would provide the same level of water quality protection as the regulations in place prior to the release.

The product of several months of discussions and meetings with officials from Bee Cave, this exchange of ETJ is recommended at this time.

RESOLUTION NO.

WHEREAS, the City of Bee Cave and the owner of certain land within Austin's extraterritorial jurisdiction (ETJ) have requested the transfer of that land from Austin's ETJ to Bee Cave's ETJ , and

WHEREAS, the owner has executed a Declaration of Restrictive Covenants impressing the land with certain restrictions, and Bee Cave has agreed to enforce such restrictions, all as set out in the Interlocal Agreement attached as Exhibit A, and

WHEREAS, the release of this ETJ under these terms will promote reasonable urban planning and regulation, **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the Council approves the transfer of approximately 145 acres of land in Austin's ETJ to the City of Bee Cave's ETJ, in accordance with the terms and conditions of the Interlocal Agreement attached as Exhibit A, and the City Manager or her designee is authorized to execute said Agreement

ADOPTED: _____, 2007

ATTEST: _____

Shirley A Gentry
City Clerk

Draft

INTERLOCAL COOPERATION AGREEMENT

This **Interlocal Cooperation Agreement** ("Agreement") is made and entered into by and between the **City of Austin**, Texas ("Austin"), a Texas home rule municipal corporation, and the City of Bee Cave, Texas ("Bee Cave "), a Texas general law municipal corporation, acting by and through their authorized representatives

Recitals

Whereas, Austin and Bee Cave (sometimes hereinafter collectively referred to as the "cities" or "parties") recognize that both the public interest and good government are best served by long-term, mutually cooperative relationships between neighboring cities, and

Whereas, agreements that establish boundaries within which specific duties are performed and standards applied in a convenient and cost effective manner to assure quality urban planning and development serve the best interests of all citizens, and

Whereas, agreement regarding areas adjacent to the cities' respective corporate limits or extraterritorial jurisdiction ("ETJ") will assist and enhance the planning and development of capital improvement programs and services, and result in meaningful protection for the environment and valuable natural resources, and

Whereas, this Agreement will accomplish legitimate public purposes of both cities and will permit dependable urban planning that will benefit the environment and the public health, safety and welfare of our respective present and future citizens, and

Whereas, the Owners of a tract of land identified on Exhibit "A" to this Agreement and Bee Cave have requested that Austin release that portion of Austin's ETJ which is approximately 145 acres identified as Tract "A" the Bee Cave Release Area (the "Bee Cave Release Area"), so that the entire 378 acre tract described as the proposed Falconhead West Development will be in Bee Cave's ETJ, and

Whereas, the Owners have agreed to impress the land with Restrictive Covenants which include restrictions on development as set out in Exhibit B to this Agreement, which restrictions may be enforced by Austin or Bee Cave, and based on these restrictions, Austin has agreed to release the ETJ as set out in this Agreement, and

Whereas, after the ETJ release contemplated by this Agreement has been completed, Bee Cave will be responsible for regulation of development and public and private construction improvements within that area,

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code* and as otherwise authorized by the governing bodies of Austin and Bee Cave and the laws of the State of Texas, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the citizens of the cities, and subject to each and every term and condition of this Agreement, the parties contract, covenant and agree as follows

Article One Findings and Declarations.

Section 1.1. Fact Findings. The recitals above are adopted as findings by the governing bodies of Austin and Bee Cave, and are incorporated herein for all purposes. The governing bodies of Austin and Bee Cave have authorized and approved this Agreement.

Section 1.2. Water Protection Requirements. The application and enforcement of the Development and Water Quality Regulations within the Bee Cave Release Area, as set out in Exhibit B, are reasonable and necessary for the preservation and protection of water quality, the watersheds of both Bee Cave and Austin, and valuable natural resources.

Article Two Term and Nature of Agreement

Section 2.1. Term of Agreement. The term of this Agreement shall commence on the last day of the month in which the agreement is authorized and executed by authorized representatives of both cities ("Effective Date"), for an initial term of one year. The term automatically renews on the Effective Date for successive annual terms until terminated by mutual agreement of the parties.

Section 2.2. Intent and Purpose. The intent and purpose of this Agreement is to provide for effective and efficient urban planning, the release of ETJ as set out in this Agreement, and that Bee Cave shall be responsible for regulation of development and public and private construction improvements and application and enforcement of the Development and Water Quality Regulations within the Bee Cave Release Area, as more particularly described in Exhibit B.

Section 2.3. Map. References in this Agreement to any geographic areas refer to the area named and shown on the Map attached hereto as Exhibit A and incorporated herein for all purposes.

Article Three Release of ETJ

Section 3.1 ETJ Release. Austin will release to Bee Cave the portion of Austin ETJ identified as the Bee Cave Release Area shown on Exhibit A to this Agreement, and as more particularly described in Exhibit A. Such release is subject to conditions that the area will become a part of Bee Cave's ETJ and the application and enforcement of the Development and Water Quality Regulations for the approval of subdivisions and land development, as set forth herein, within the Bee Cave Release Area. The release is effective on the last day of the month in which both parties have executed this Agreement.

Section 3.2. Bee Cave has agreed to the exchange of ETJ areas identified on Exhibit A as Tracts "B" and "C", between Austin and the City of Lakeway, as authorized by Lakeway and Austin under separate Interlocal Agreement.

Article Four

Review and Approval of Subdivision Applications and Construction

Section 4.1. Subdivision and Construction Review and Approval. Upon release of ETJ in accordance with Section 3.1, Bee Cave will provide urban planning and will enforce the requirements set out in Exhibit B within the Bee Cave Release Area, and will review, provide oversight and inspect subdivisions and land development within the Bee Cave Release Area, and will only approve subdivisions and land developments in the Bee Cave Release Area that are in compliance with the requirements of Exhibit B, incorporated herein by reference.

Section 4.2. Enforcement and Compliance. The standards, regulations and conditions set forth in Exhibit B to this Agreement for the review and approval of development within the Bee Cave Release Area shall be applied and enforced by Bee Cave, its officers, employees, agents and representatives, in a manner consistent with the wording and intent of this Agreement. They shall remain development regulations and requirements of Bee Cave within the Bee Cave Release Area. If Bee Cave contracts with Travis County, pursuant to *Chapter 242 Texas Local Government Code*, or otherwise, for Travis County to review and approve land development within Bee Cave's ETJ, it shall be an event of default under this Agreement unless the standards and regulations set forth in this Agreement are applied and enforced in a manner consistent with the intent of this Agreement.

Article Five

General and Miscellaneous.

Section 5.1. Development Approval and Policy Making Authority. Bee Cave shall have exclusive responsibility for urban planning within the Bee Cave Release Area that is consistent with this Agreement, and the approval of land development and subdivisions within the Bee Cave Release Area in compliance with this Agreement. Bee Cave shall further have control, supervision and policy making authority for and with respect to city services and future services within the Bee Cave Release Area, to the fullest extent authorized by State law and not inconsistent with this Agreement.

Section 5.2. Jurisdiction. This Agreement shall not be deemed to extend or increase the jurisdiction or authority of either of the cities except as necessary to implement and give effect to this Agreement. All governmental and proprietary functions and services to be performed and provided by Bee Cave within the Bee Cave Release Area shall, except as provided otherwise by State law and in this Agreement, be and remain in the sole discretion of Bee Cave. Nothing in this Agreement shall be deemed to be applicable to, or an attempt to limit or restrict, the legal rights, authority or jurisdiction of any other governmental entity.

Section 5.3. Standing in Contested Case. Bee Cave agrees not to challenge or object to the standing of the City of Austin, as a party or in any other capacity, to participate in an administrative or adjudicative proceeding relating to use of the Bee Cave Release Area for

effluent irrigation or other wastewater discharge system Austin will not challenge effluent irrigation if it is in compliance with the terms of the Restrictive Covenant attached as Exhibit B

Section 5.4 Other Services. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the cities to undertake any other action or to provide any service within the Entire Property, except as specifically set forth in this Agreement

Section 5.5. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the cities nor to create any legal rights or claims on behalf of any third party Neither Austin nor Bee Cave waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas

Section 5.6. Amendments and Modifications. This Agreement may not be amended or modified except in writing executed by both Austin and Bee Cave and authorized by their respective governing bodies

Section 5.7. Exhibits. The following exhibit is incorporated into this Agreement by reference as if fully set out herein

Exhibit "A" Tracts A, B, and C

Exhibit "B" Declaration of Restrictive Covenants

Section 5.8 Severability In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable

Section 5.9. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement

Section 5.10 Execution in Counterparts This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart

IN WITNESS WHEREOF, the authorized representatives of the Cities have executed this Agreement

City of Austin, Texas

Toby Hammett Futrell, City Manager
Date _____

City of Bee Cave, Texas

Carolyn Murphy, Mayor
Date _____

Attest _____
Sherry Mashburn, City Secretary
City of Bee Cave

EXHBIT A [MAP OF AREA]

EXHIBIT B TO INTERLOCAL AGREEMENT
DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS

COUNTY OF TRAVIS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made on this ___ day of _____, 2006 by Falconhead West, L P, a Texas limited partnership, hereinafter referred to as "Declarant"

WHEREAS, Declarant is the fee simple owner of a 378 acre tract of land described as Proposed Falconhead West Development in Exhibit "A", of which approximately 145 acres described as Tract A in Exhibit "A" (the "Bee Cave Release Area") is currently within the City of Austin's ETJ, and

WHEREAS, Declarant has requested that the Bee Cave Release Area be transferred from the extraterritorial jurisdiction of the City of Austin to the extraterritorial jurisdiction of the City of Bee Cave, and has agreed to subject the Bee Cave Release Area to certain covenants, conditions and restrictions as more specifically set forth in this Declaration,

NOW THEREFORE, in consideration of the release of the Bee Cave Release Area from the City of Austin's extraterritorial jurisdiction, and intending to bind itself, its assigns and successors and all other persons hereafter having an interest in the Bee Cave Release Area, the Declarant does hereby declare, impose and subject the Bee Cave Release Area as follows

1 Development and Water Quality Regulations In this Declaration, the terms Development, Bluffs, Wetlands, Springs and Impervious Cover are defined as in the Village of Bee Cave's development regulations. The Property shall be developed and/or maintained in accordance with each of the following

a Impervious Cover Impervious cover on the property shall be limited to a maximum of 10% Gross Site Area, or 14.6 acres

b Little Barton Creek Watershed No development shall be allowed in the Little Barton Creek Watershed

c Critical Environmental Features ("CEF") Setback Development shall be set back a minimum of 150 feet from Bluffs, Springs, and Wetlands. The objective is to maintain a natural, undisturbed condition within the CEF setback area. Within the 150 foot setback area

(i) a hiking trail or open yard is allowed, if located at least 50 feet from the edge of the CEF,

(ii) a natural vegetative cover must be retained to the maximum extent practicable,

(iii) construction is prohibited, except for hiking trails and open yards, and

(iv) wastewater disposal or irrigation is prohibited

d Creek Buffer Development shall be set back a minimum of 150 feet from the centerline of waterways with a drainage area of 64 to 320 acres. Development shall be set back a minimum of 25 feet from the centerline of waterways with a drainage area of 5 to 64 acres.

e Development on Slopes Driveways may not be constructed on a slope of greater than 15%. Other development may not be constructed on a slope of greater than 25%.

f Stormwater Water Quality Measures Development must provide vegetative filter strips or other structures or controls that remove 70% of the increase in total suspended solids and total phosphorus resulting from all development, and shall remove 70% of the increase in total suspended solids, total phosphorus, and oil & grease resulting from non-single family residential development.

g Open Space Use Restrictions A minimum of 122 acres will be reserved as open space/greenbelt/preserve and dedicated to the Village of Bee Cave for management and operation. Improvements may consist of the following:

- (i) Oak wilt control,
- (ii) Stream bed erosion protection, if needed,
- (iii) A hiking path network with interpretive signs, overlook shelters, small picnic and pavilion facilities, and benches,
- (iv) A wildlife management plan and predator control,
- (v) Enhancement of desirable plant communities, and
- (vi) Near Hwy 71 with access from the main boulevard (Vail Divide) in non-COA ETJ area, a ten-space parking lot and restroom facility served by the Falconhead West water and wastewater system.
- (vii) LCRA will be granted an easement for future disposal of wastewater effluent by subsurface irrigation subject to certain conditions and restrictions stated below and within the areas depicted on the attached map.
- (viii) Wastewater lift stations serving the single family residential area,
- (ix) Vegetative filter strips and other structures or controls for water quality purposes.

Except as permitted above, uses are limited to low-impact recreational activities, such as hiking, ecotourism, scientific education and research, habitat preservation and enhancement, and other outdoor activities which are not inconsistent with these activities.

2 Binding Effect Third Parties It is intended that the provisions of this Declaration shall be binding on all successors and assigns and run with the land No rights, privileges or immunities, however, shall inure to the benefit of the public, any adjoining property owner or other third party (other than the City of Austin and the City of Bee Cave) as a result of this Declaration, nor shall any adjoining property owner or other third party (other than the City of Austin and/or the City of Bee Cave) be deemed to be a beneficiary of any of the provisions contained herein The provisions of this Declaration shall be enforceable by the City of Austin and the City of Bee Cave, and Declarant and his successors and assigns If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin or the City of Bee Cave, and Declarant or his successors and assigns, to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions

If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect

If at any time the City of Austin or the City of Bee Cave fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it

3 Modification This Declaration may be modified, amended, or terminated only by the collective action of (a) at least fifty percent (50%) of the members of the Council of the City of Austin, (b) at least fifty percent (50%) of the members of the Council of the City of Bee Cave, and (c) the owner(s) of at least fifty percent (50%) of the gross land area of the Bee Cave Release Area at the time of such modification, amendment, or termination

4 Counterparts This Declaration may be executed in multiple counterparts, which shall be considered on instrument when taken together

5 Applicability Nothing herein shall be interpreted or implied to constitute an amendment, modification or nullification of the existing Development Agreement between the City of Bee Cave, Texas (formerly Village of Bee Cave) and Spillman Development Group, Ltd , a Texas limited partnership and the conditions and requirements of this Declaration shall apply to the Bee Cave Release Area in addition to, and are cumulative of, any requirements in the existing Development Agreement This Declaration shall apply to the Bee Cave Release Area only and shall not affect other real property owned by Declarant

Falconhead West, L P , a Texas Limited
Partnership,
By Ryland Homes of Texas, Inc , a Texas
Corporation, its managing general partner, by

Printed Name
Title

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared _____ of Ryland Homes of Texas, Inc , the Managing General Partner of Falconhead West, L P , on behalf of said corporation and said limited partnership

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____ 2006

Notary Public in and for the
State of Texas

After Recording Return To